



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0323; FRL-9720-8]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Tennessee: Bristol; Determination of Attaining Data for the 2008 Lead Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Bristol nonattainment area (hereafter also referred to as the “Bristol Area” or “Area”) has attained the 2008 lead NAAQS. On April 4, 2012, the State of Tennessee, through the Tennessee Department of Environment and Conservation, submitted a request to EPA to make a determination that the Bristol nonattainment area for the 2008 lead national ambient air quality standards (NAAQS or standard) has attained the 2008 lead NAAQS. This determination of attaining data is based upon complete, quality-assured and certified ambient air monitoring data for the 2009 - 2011 period showing that the Area has monitored attainment of the 2008 lead NAAQS. Additionally, as a result of this determination, EPA is taking final action to suspend the requirements for the Area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines for so long as the Area continues to attain the 2008 lead NAAQS.

EFFECTIVE DATE: This final rule is effective on [insert date 30 days after publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2012-0323. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

FOR FURTHER INFORMATION CONTACT: Steve Scofield or Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Scofield may be reached by phone at (404) 562-9034 or via electronic mail at scofield.steve@epa.gov. Mr. Farngalo may be reached by phone at (404) 562-9152 or via electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Taking?

II. What is the Effect of this Action?

III. What is EPA's Final Action?

IV. Statutory and Executive Order Reviews

I. What Action is EPA Taking?

EPA is taking final action to determine that the Bristol Area (comprising the portion of Sullivan County bounded by a 1.25 kilometer radius surrounding the Universal Transverse Mercator (UTM) coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Technologies Facility) has attaining data for the 2008 lead NAAQS. This clean data determination is based upon quality assured, quality controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 2008 lead NAAQS based on the 2009 – 2011 data. While still preliminary, the available 2012 monitoring data also monitored attainment for the 2008 lead NAAQS.

Other specific requirements of the clean data determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on June 14, 2012 (77 FR 35652) and will not be restated here. The comment period closed on July 16, 2012. No comments, adverse or otherwise, were received in response to the NPR.

II. What is the Effect of this Action?

This final action suspends the requirements for this Area to submit an attainment demonstration, associated RACM, RFP plan, and contingency measures for failure to meet RFP and attainment deadlines so long as this Area continues to meet the 2008 lead NAAQS.

Finalizing this action does not constitute a redesignation of the Bristol Area to attainment for the 2008 lead NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this

action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

III. What is EPA's Final Action?

EPA is taking final action to determine that the Bristol Area has attaining data for the 2008 lead NAAQS. This clean data determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 2008 lead NAAQS during the period 2009 – 2011. This final action suspends the requirements for this Area to submit an attainment demonstration, associated RACM, RFP plans, and contingency measures for failure to meet RFP and attainment deadlines so long as this Area continues to meet the 2008 lead NAAQS. EPA is taking this final action because it is in accordance with the CAA and EPA policy and guidance.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action makes the determination based on air quality data, and suspends certain federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). Because this rule makes a

determination based on air quality data and suspend certain federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it only proposes to make a determination based on air quality data and suspend certain federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting federal standards. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the CAA. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality

data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the determination of attaining data for the 2008 lead standard for the Bristol Area, may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead, Reporting and recordkeeping requirements.

Date: August 13, 2012

A. Stanley Meiburg
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR – Tennessee

2. Amend § 52.2236 by designating the existing undesignated paragraph as paragraph (a), and adding paragraph (b) to read as follows:

§ 52.2236 Control strategy; lead.

(a) * * *

(b) *Determination of attaining data.* EPA has determined the Bristol, Tennessee, nonattainment area has attaining data for the 2008 lead (Pb) NAAQS. This clean data determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2008 Pb NAAQS.

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